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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,105	01/21/2004	David A. Griffith	PC25512A	7434
28523 7590 05/14/2007 PFIZER INC. PATENT DEPARTMENT, MS8260-1611 EASTERN POINT ROAD GROTON, CT 06340			EXAMINER BALASUBRAMANIAN, VENKATARAMAN	
			ART UNIT 1624	PAPER NUMBER
			MAIL DATE 05/14/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/763,105	<b>Applicant(s)</b> GRIFFITH, DAVID A.	
	<b>Examiner</b> Venkataraman Balasubramanian	<b>Art Unit</b> 1624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-36,56,58-80,97,101,108,120 and 121 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 101,108,120 and 121 is/are allowed.
- 6) ☐ Claim(s) 1-9,11-16,18,21-26,28-34,56,58-80 and 97 is/are rejected.
- 7) ☒ Claim(s) 10, 17, 19, 20, 27, 35 and 36 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                            |                                                                                         |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                           | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

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### **DETAILED ACTION**

Applicants' response filed on 2/23/2007, is made of record. Claims 1-36, 56, 58-80, 97, 101, 108, 10 and 121 are pending. In view of applicants' response the following rejection made in the previous office action is maintained.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

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consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-9, 11-16, 18, 21-26, 28-34, 56, 58-80 and 97 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gudmundsson et al., WO 03/076441.

Gudmundsson et al. teaches several pyrazolotriazine compounds for treating herpes viral infection. See pages 4-6, formula 1 and note the definition of various variable groups. See entire document. Particularly see pages 80-109, examples 1-31. Especially see examples 6 and 31, which differ from instant compounds as positional isomers as to substituents in the pyrazolo rings. Exchanging the position of these two substituents would result in instant compounds.

Instant compounds require  $R^1$  to be optionally substituted aryl or optionally substituted heteroaryl and  $R^2$  to be an optionally substituted aryl while reference teaches the substituted aryl in the  $R^1$  position and substituted heteroaryl in  $R^2$  position. Clearly, the compounds taught by the reference are positional isomers.

While said compound(s) doesn't anticipate the scope of instant claims, they are very closely related, being positional isomers of compounds. However, positional isomers are not deemed patentably distinct absent evidence of superior or unexpected properties. See *In re Crounse*, 150 USPQ 554; *In re Norris* 84 USPQ 458; *In re Finely* 81 USPQ 383 and 387; *Ex parte Engelhardt*, 208 USPQ 343; *Ex parte Henkel*, 130 USPQ 474, regarding positional isomers.

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Thus it would have been obvious to one skilled in the art at the time of the invention was made to expect instant compounds to possess the utility taught by the applied art in view of the close structural similarity outlined above.

Thus it would have been obvious to one having ordinary skill in the art at the time of the invention was made to make positional isomers of compounds using the teachings of Gudmundsson et al and expect resulting compounds to possess the uses taught by the art in view of the equivalency teaching outline above.

This rejection is same as made in the previous office action. Applicants' traversal to overcome this rejection is not persuasive. Following apply.

- 1) The WIPO document is filed after 29 November 2000.
- 2) It is in English
- 3) It designates US
- 4) Therefore the first effective filing date is the filing date of the WIPO not the publication date as asserted by the applicants.
- 5) The WIPO claims priority to US provisional application.
- 6) Hence, the correct effective filing date is the date of the provisional application.  
This will be the 102 e date. The 103 rejection is therefore based on this date.
7. The rejection is proper, as applicants have not shown any common ownership.

Since the invention of WIPO and instant invention are not commonly assigned, this rejection is proper and is maintained.

***Allowable Subject Matter***

Claims 10, 17, 19, 20, 27, 35 and 36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 101, 108, 120 and 121 are allowed. Said claims would be allowable as prior art search in the related area did not teach or suggest the compounds and method of use embraced in these claims.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication from the examiner should be addressed to Venkataraman Balasubramanian (Bala) whose telephone number is (571) 272-0662. The examiner can normally be reached on Monday through Thursday from 8.00 AM to 6.00 PM. The Supervisory Patent Examiner (SPE) of the art unit 1624 is

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James O. Wilson, whose telephone number is 571-272-0661. The fax phone number for the organization where this application or proceeding is assigned (571) 273-8300. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAG. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-2 17-9197 (toll-free).

  
Venkataraman Balasubramanian

5/9/2007